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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
Eastern Division

UNITED STATES OF AMERICA,
Plaintiff,

v.

RUSSELL MARTIN BLISS, et al.,

Defendants.

Civil Action Nos.

84-200C(1), 89-351C(1)-
89-371C(1) and
90-656C(1)

UNITED STATES OF AMERICA,
Plaintiff,

v.

NORTHEASTERN PHARMACEUTICAL
AND CHEMICAL COMPANY, et al.,

Defendants.

Civil Action No.

80-5066-CV-S-4

STATE OF MISSOURI,
Plaintiff,

v.

INDEPENDENT PETROCHEMICAL
CORPORATION, et al.,

Defendants.

Civil Action No.

83-2670 C(2)

STATE OF MISSOURI,
Plaintiff,

v.

RUSSELL MARTIN BLISS, et al.,

Defendants.

Civil Action No.

84-1447 C(4)

STATE OF MISSOURI
Plaintiff,

v.

Syntex (U.S.A.), Inc., et al.,

Defendants.

Civil Action No.

85-2856 C(6)

CONSENT DECREE AND FINAL ORDER BETWEEN UNITED STATES OF AMERICA,
STATE OF MISSOURI, NORTHEASTERN PHARMACEUTICAL AND CHEMICAL
COMPANY, EDWIN B. MICHAELS AND JOHN W. LEE

40033278
SUPERFUND RECORDS

I. BACKGROUND

1. Plaintiffs, the United States of America and the State of Missouri, have filed complaints in the above-captioned cases alleging, inter alia, that defendants Northeastern Pharmaceutical and Chemical Company (NEPACCO), Edwin B. Michaels and John W. Lee (collectively, the NEPACCO defendants) are liable to the United States and to the State, pursuant to, inter alia, Section 7003 of the Resource Conservation and Recovery Act, as amended, (RCRA), 42 U.S.C. § 6973, and Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended by the Superfund Amendments and Reauthorization Act of 1986, P.L. 99-499, (hereinafter collectively referred to as CERCLA), 42 U.S.C §§ 9606, 9607, (and, by the State, public nuisance under State common law), for injunctive relief and recovery of response costs, in connection with the actual or threatened release of 2,3,7,8-tetrachlorodibenzo-p-dioxin (dioxin or TCDD) and 2,4,5-trichlorophenol (TCP) and other hazardous wastes, substances, pollutants or contaminants generated at Verona, Missouri and released at the sites referred to in the above-captioned cases.

2. The United States and the State have determined that there have been additional actual or threatened releases of dioxin and TCP and other hazardous wastes, substances, pollutants or contaminants generated at Verona, Missouri and released at other sites in Missouri and that the plaintiffs have incurred and will continue to incur response costs in connection with the

contamination at these sites and the sites specified in the above-captioned cases (which sites are referred to collectively as the Missouri Dioxin Sites, and are specified in Attachment A, which is incorporated by reference).

3. On April 16, 1984, judgment in the amount of \$155,171.93 was entered jointly and severally against the NEPACCO defendants in United States v. NEPACCO, and all appeals in that case have been exhausted, 810 F.2d 726 (8th Cir. 1986), cert. denied, ___ U.S. ___, 108 S.Ct. 146 (1987). Pursuant to the Order entered by Judge Russell G. Clark on May 9, 1990, jurisdiction over the claims against defendants NEPACCO, Michaels and Lee has been transferred to the Eastern District of Missouri to facilitate lodging and entry of this Decree.

4. On August 7, 1987, partial summary judgment on liability was entered jointly and severally against the NEPACCO defendants in United States v. Bliss.

5. The United States and the State have also asserted potential claims for natural resource damages arising out of the releases of hazardous wastes and hazardous substances at and from the Missouri Dioxin Sites.

6. The Plaintiffs have alleged that there has been a release or threatened release of dioxin and TCP and other hazardous wastes, substances, pollutants and contaminants which present, or may present, an imminent and substantial endangerment to the public health, welfare, or environment at all or some of the Missouri Dioxin Sites and the Settling Parties deny any and all legal or

equitable liability under any federal or state statute, law, ordinance, regulation, or common law for any natural resource damages, endangerment, public or private nuisance, trespass, ultrahazardous or strict liability, negligence, or negligence per se for response, removal or remedial costs incurred by the United States or the State, or for damages caused by storage, treatment, handling or disposal of any hazardous substances, pollutants, contaminants, or by the actual or threatened release of such hazardous substances to, at, from, or near the Missouri Dioxin Sites.

7. The Plaintiffs and the NEPACCO defendants hereby acknowledge that said defendants have limited assets with which to satisfy any judgments against them that have either been previously entered or may be entered in the future in connection with the release of dioxin and TCP and other hazardous wastes, substances, pollutants and contaminants at the Missouri Dioxin Sites.

8. This Consent Decree is made and entered into by and between the United States, the State, and the Settling Parties (as hereinafter defined) in order to resolve claims against those parties arising out of the release of dioxin and TCP and other hazardous wastes, substances, pollutants and contaminants at the Missouri Dioxin Sites.

9. Settling Parties have been authorized by their insurance carrier, as evidenced by the correspondence in Attachment B, which is hereby incorporated by reference, to resolve the claims by the United States and the State in connection with the

Missouri Dioxin Sites. The remaining property damage amounts available under the NEPACCO defendant's policies of insurance total \$235,000. \$10,000 will be held in reserve by the NEPACCO defendants to pay all property damage claims other than those by the United States and the State in connection with the release of dioxin in Missouri. Plaintiffs have agreed to accept the remaining \$225,000 in settlement, pursuant to this Decree, of claims against the NEPACCO defendants in connection with actual or threatened releases at the Missouri Dioxin Sites.

10. Plaintiffs and the Settling Parties mutually recognize, and this Court, by entering this Decree finds, that by settling and resolving claims that were and are disputed as to validity and amount, and that by providing for contribution by the Settling Parties to Response Costs (as hereinafter defined) at the Missouri Dioxin Sites, this Decree avoids further difficult, prolonged and complicated litigation; is entered into in good faith; and is in the public interest.

NOW, THEREFORE, upon consideration of the foregoing, it is ORDERED, ADJUDGED AND DECREED as follows:

II. JURISDICTION

11. This Court has subject matter jurisdiction over these actions and the parties entering into this Decree pursuant to 28 U.S.C. §§1331(a), 1345 and 42 U.S.C. §§ 6973(a), 9607(a) and 9613. The complaints herein state claims for which relief can be granted.

III. APPLICABILITY

12. This Decree shall apply to and be binding upon the parties to this Decree and upon their successors in interest and assigns. The undersigned representative of each party certifies that he or she is fully authorized by the party whom he or she represents to enter into the terms and conditions of this Decree, to execute this Decree, and to bind legally such party to it.

IV. DEFINITIONS

13. Certain terms used in this Decree are defined below, and any term not otherwise defined herein shall have the definition as set forth in 42 U.S.C. §9601. The defined terms are as follows:

A. "The Missouri Dioxin Sites" shall mean the hazardous waste sites referred to in Attachment A, which is incorporated by reference.

B. "Covered Matters" shall mean any and all civil claims against and civil liability, if any, of the Settling Parties (as defined herein) under federal and state statutory, regulatory or common law enforced or administered by the United States Environmental Protection Agency (EPA), the United States Department of Interior (Interior), or the State, for:

- (1) all Response Costs (as hereinafter defined);
- (2) any and all claims by EPA, or the State, including Response Costs claims, arising out of the actual or threatened release at the Missouri Dioxin Sites of dioxin or TCP or other hazardous wastes, substances, pollutants or contaminants generated at Verona, Missouri;

- (3) claims for natural resource damages arising out of the actual or threatened release at the Missouri Dioxin Sites of dioxin or TCP or other hazardous wastes, substances, pollutants or contaminants generated at Verona, Missouri.

Notwithstanding any other provision, "Covered Matters" shall not include any claims by the federal government or the State for injunctive or remedial relief, the recovery of response costs or for natural resources damages, arising out of the actual or threatened release of hazardous wastes, substances, pollutants or contaminants at sites other than those specified in Attachment A or for any potential criminal liability. In the event that, after this Decree has been entered, the United States and the State determine that they will not pursue a civil claim for injunctive or remedial relief, the recovery of response costs, or natural resource damages at sites other than those specified in Attachment A, then this Decree may be modified pursuant to Section IX to include those additional sites and/or natural resource damage claims by the United States and the State within "Covered Matters."

C. "Response Costs" means all costs that may be incurred for activities under 42 U.S.C. §§ 6973(a) and 9601(23-25), including but not limited to, legal, administrative, personnel, travel, removal, remedial, response, transportation, investigative (including remedial investigation/feasibility study and any other studies or reports), oversight, overhead,

enforcement costs, and other direct or indirect costs (including any and all interest thereon) incurred or to be incurred by the United States and the State pursuant to CERCLA and RCRA or any other applicable laws or regulations for response actions undertaken in connection with the Missouri Dioxin Sites, or with the execution and administration of this Decree. Notwithstanding the foregoing, "Response Costs" excludes all costs which may be incurred pursuant to Paragraph 22.

D. "State of Missouri" or "State" shall mean the State of Missouri, the Missouri Department of Natural Resources, and any other state agency that may have jurisdiction over the subject matter hereof.

E. "Settling Parties" shall mean the NEPACCO defendants, (i.e., Northeastern Pharmaceutical and Chemical Company, Edwin B. Michaels, and John W. Lee) in the above-captioned actions and the officers and directors of NEPACCO, as indicated in Attachment C, on whose behalf this Decree is executed and on whose behalf all the payments required pursuant to Section V of this Decree have been made, including the Settling Parties' respective present and future successors and assigns. "Settling Parties" shall not include any officers, employees or agents of Syntex Corporation, Allen & Company, their subsidiaries or related entities.

F. "Hazardous wastes, substances, pollutants or contaminants" shall have the same meaning as used in RCRA and CERCLA; however, "hazardous wastes, substances, pollutants or contaminants" shall not include any material containing hazardous

wastes, substances, pollutants or contaminants, including dioxin or TCP, removed from the sites indicated in Attachment A to other locations.

V. PAYMENT OF COSTS INCURRED

14. Within thirty (30) days of the entry of this Decree, the Settling Parties shall pay the sum of \$202,500.00 to the United States, of which \$2000.00 shall settle and resolve the claims against Settling Parties for past response costs in United States v. NEPACCO, et al.; \$500.00 shall settle and resolve the claims against Settling Parties in United States v. Bliss, et al., and claims in connection with the sites referred to in Attachment A; and \$200,000.00 shall settle and resolve claims against Settling Parties for potential natural resource damages by Interior.

15. Payment of the amounts allocated to the NEPACCO and Bliss cases shall be made by a certified or cashier's check or other mutually acceptable means, payable to the "EPA, Hazardous Substance Superfund" and shall be sent to EPA-Superfund, P.O. Box 371003M, Pittsburgh, Pennsylvania 15251. The transmittal of such payment shall reference the "Missouri Dioxin Sites and Civil Action Nos. 80-5066-CV-S-4, 84-0200C(1) and 89-351C(1)-89-371C(1) and 90-656C(1)."

16. Payment of the amounts allocated to Interior's claim for natural resource damages shall be made by a certified or cashier's check or other mutually acceptable means, payable to the United States of America, and shall be sent to the Office of the Secretary, Fiscal Services, United States Department of

Interior, 1849 C. Street, N.W., Washington D.C. 20240. The transmittal of such payment shall reference the "Missouri Dioxin Sites and Civil Action Nos. 80-5066-CV-S-4, 84-0200C(1), 89-351C(1)-89-371C(1) and 90-656C(1)."

17. Within thirty (30) days of the entry of this Decree, Settling Parties shall also pay the sum of \$22,500.00 to the State of which \$3750.00 shall settle and resolve the claims against Settling Parties in Civil No. 83-2670C(2); \$3750.00 shall settle and resolve the claims against Settling Parties in Civil No. 84-1447C(4); and \$15,000.00 shall settle and resolve the claims against Settling Parties in Civil No. 85-2856C(6).

Payment shall be made by certified or cashier's check or other mutually acceptable means, payable to "Hazardous Waste Remedial Fund" and shall be sent to Mr. Timothy Duggan, Assistant Attorney General, P.O. Box 899, Jefferson City, Missouri 65102. The transmittal of such payment shall reference "the Missouri Dioxin Sites and Civil Nos. 83-2670C(2), 84-1447C(4) and 85-2856C(6)."

18. The payments made herein shall not be construed in any way as an admission of liability by Settling Parties.

19. Settling Parties hereby certify 1) that their insurance carrier has indicated, as per the correspondence in Attachment B, that the aforementioned payments completely exhaust any and all remaining property damage insurance coverage amounts specified in the policies of insurance issued to the NEPACCO defendants in 1970, 1971 and 1972 by the Continental Insurance Companies and that said insurance companies have issued no other policies of

insurance to the Settling Parties which may be potentially available to satisfy property damage claims against the Settling Parties in connection with the Missouri Dioxin Sites, and 2) that no other policies of insurance were issued by other insurance carriers to the Settling Parties that may be potentially available to satisfy property damage claims against the Settling Parties in connection with the Missouri Dioxin Sites.

VI. COVENANT NOT TO SUE

20. In consideration of and upon receipt by the Plaintiffs of payment by the Settling Parties under the terms of this Decree, and except as set forth in Paragraph 22, the United States and the State covenant not to sue or take administrative action against the Settling Parties for Covered Matters.

21. This Decree in no way shall release from liability any person or entity not a party to this Decree, nor will it in any way release from liability any NEPACCO officer or director indicated in Attachment C, whose potential liability does not arise solely from his or her status as a NEPACCO officer or director; however, except as specified herein, defendants Edwin B. Michaels and John W. Lee shall be released for any actions giving rise to potential liability whether performed in their individual capacities or as officers and directors of NEPACCO.

22. Notwithstanding any other provisions of this Decree, the United States and the State reserve the right to institute a new action against any person or entity, including the Settling Parties, to seek additional remedial measures, reimbursement of

costs incurred in implementing such additional remedial measures, or natural resources damages in the event that:

- (1) an actual or threatened release of hazardous wastes, substances, pollutants or contaminants resulting from conditions unknown to the United States or the State as of the date of lodging of this Decree is discovered in connection with Missouri Dioxin Sites and such actual or threatened releases arises out of the facts alleged in the complaints in the above-captioned cases, including the generation of dioxin, TCP and other hazardous wastes, substances, pollutants or contaminants at Verona, Missouri, as alleged in those complaints; or
- (2) the United States determines, based upon information received after the lodging of this Decree that a planned remedial action is not protective of human health and the environment.

Any information contained in any Record of Decision; completed, final Remedial Investigation; or completed, final Feasability Study, completed, signed or approved prior to the entry of this Decree will not be considered to be conditions unknown to the United States or the State.

23. In the event that the United States or the State institutes a new action pursuant to Paragraph 22, or any other authority of law, seeking additional remedial measures, reimbursement of costs incurred in implementing such additional remedial measures, or

any other reimbursement or damages related to or arising out of the contamination of the Missouri Dioxin Sites, the Settling Parties hereby expressly reserve any and all rights, claims and defenses that they may have now or may have in the future.

24. The United States, the State and the Settling Parties expressly reserve all claims, demands and causes of action, either judicial or administrative, past or future in law or equity, against any person or entity not a party to this Decree for any matter arising out of the Missouri Dioxin Sites. No person or entity, other than the United States, the State or the Settling Parties, shall have the authority to seek to enforce the terms of this Decree.

VII. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

25. The Settling Parties, in resolving the question of liability to the United States and the State of Missouri herein, shall not be liable for claims for contribution regarding Covered Matters in accordance with Section 113(f)(2), 42 U.S.C. § 9613(f)(2) and, with respect to claims by the State, R.S.Mo. § 537.060. This Decree does not discharge any non-settling potentially responsible parties (PRPs) but it reduces the potential liability of such non-settling PRPs to the United States and the State by the amount of the respective settlements herein.

26. The Settling Parties may, to the extent permitted pursuant to CERCLA, seek contribution from any PRP not a party to this Decree.

27. Each of the Settling Parties agrees that in the event any suit or claim for contribution is brought against it for matters covered by this Decree, it will timely notify plaintiffs of the institution of such suit or claim.

28. Nothing herein shall be construed to affect the authority of the United States and the State to reach other settlements with PRPs or to limit the ability of those PRPs to obtain contribution protection pursuant to CERCLA in such settlements.

VIII. WAIVER OF CLAIMS

29. Except as provided in Paragraph 23, the Settling Parties release the United States from any claim or claims they may have against the United States or the State with respect to which a covenant not to sue has been granted pursuant to Section VI. Except as provided in Section VI, the Settling Parties agree not to assert any claims or demands for compensation or payment under Sections 111 and 112 of CERCLA, 42 U.S.C. §§9611 and 9612, or any other provision of law, against the United States or the Hazardous Substance Superfund established by Section 221 of CERCLA, 42 U.S.C. §9631, or the State, for or arising from, any activity performed or expenses accrued with respect to which a covenant not to sue has been granted pursuant to Section VI.

IX. MODIFICATION; COUNTERPARTS; PARAGRAPH HEADINGS

30. Any modification of this Decree shall be by written agreement of the parties hereto, signed by the United States, the State and the Settling Parties, and approved by this Court.

31. This Decree may be executed in any number of counterparts, each of which shall be deemed an original but all of which taken together shall constitute one and the same instrument.

32. All Section and Paragraph headings herein are for convenience and are in no way to be construed as part of this Decree or as a limitation on the scope of the provisions to which they may refer.

X. EFFECTIVE DATE

33. This Decree shall become effective upon entry by this Court following compliance with the settlement procedures set out in 42 U.S.C. § 9622(i).

XI. RETENTION OF JURISDICTION

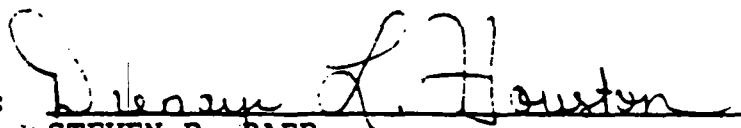
34. The Court shall retain jurisdiction to modify and enforce the terms and conditions of this Decree and to resolve disputes that may arise regarding construction or execution of this Decree; provided, however, that upon notification to the Court by the United States and the State of receipt of payment by the Settling Parties of the sums set forth in Section V hereof, this Court shall dismiss the civil actions herein as to the NEPACCO defendants only. Such dismissal shall not affect this provisions of Sections VI, VII, VIII, X and XI hereof.

FOR THE UNITED STATES:

BY:


RICHARD B. STEWART
Assistant Attorney General

BY:



STEVEN R. BAER

Senior Attorney

DRENAYE L. HOUSTON

Trial Attorney

Environmental Enforcement

Section

Environment and Natural Resources

Division

United States Department of Justice

Washington, D.C. 20530

(202) 514-2794

BY:

Morris Kay
MORRIS KAY
Regional Administrator

BY:

Martha Steincamp
MARTHA STEINCAMP
Regional Counsel

BY:

Cheryl M. Micinski
CHERYLE M. MICINSKI
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726 Minnesota Avenue
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(913) 551-7274

BY:

JAMES STROCK

Assistant Administrator for Enforcement
and Compliance Monitoring
United States Environmental Protection
Agency

BY:

A. WILEY RAY

Office of Enforcement and Compliance
Monitoring
United States Environmental Protection
Agency

401 M Street, S.W.

Washington, D.C. 20460

(202) 382-3107

FOR THE STATE OF MISSOURI

Date

TIMOTHY P. DUGGAN
Assistant Attorney General
Office of the Attorney General
State of Missouri
8th Floor, Broadway Office Building
221 West High Street
P.O. Box 899
Jefferson City, Missouri 65102
(314) 751-8806

Date

G. TRACY MEHAN III, Director
Department of Natural Resources

Date _____

STEPHEN G. JEFFERY, General Counsel
Office of the Director
Department of Natural Resources
State of Missouri

FOR NORTHEASTERN PHARMACEUTICAL AND
CHEMICAL COMPANY, EDWIN B. MICHAELS,
JOHN W. LEE, and the SETTLING PARTIES

By: 

TED L. PERRYMAN
JOHN L. WALKER
ROBERTS, PERRYMAN, BOMKAMP
& NEIVES, P.C.
1 Mercantile Center, Suite 2300
St. Louis, Missouri 63101
(314) 421-1850

By: 

EDWIN B. MICHAELS, as former President
of NEPACCO, and individually.

By: 

JOHN W. LEE, as former Vice-President
of NEPACCO, and individually.

ATTACHMENT A

1. Arkansas Best Freight
2. Baxter Garden
3. Bliss-Frontenac
4. Bonifield Brothers Trucking
5. Bull Moose Tube
6. East Texas Motor Freight
7. Hamill Transfer
8. Jones Truck Line
9. Bliss-Ellisville (including Mid-America Arena)
10. Overnite Transport
11. Southern Cross Lumber
12. 141 Access Road
13. Rosati/Piazza Road/Bliss Farm
14. Bubbling Springs
15. Community Christian Church
16. East North Street, including Southwestern Bell
17. Manchester United Methodist Church
18. Minker/Stout/Romaine Creek/Cashel/Sullins
19. Quail Run Mobile Home Park/Chulanda/Mahaney
20. Saddle & Spur
21. Lacy Manor/Sandcut Road
22. Shenandoah Stables
23. Castlewood/Sontag Road
24. Timberline Stables
25. Times Beach
26. Denney Farm
27. Rusha Farm
28. Erwin Farm
29. Bill Ray Farm
30. Syntex/Springfield
31. Syntex/Verona
32. Neosho Wastewater School
33. Baldwin Park
34. Hellwig Fruit Market
35. Bristol Steel

ATTACHMENT B

Office of Attorney General
Land and Natural Resources Division
United States Department of Justice
Washington, D.C. 20530

Office of Attorney General
State of Missouri
Broadway Office Bldg.,
8th Floor
221 West High Street
P. O. Box 899
Jefferson City, MO 65102

Re: United States v. NEPACCO.
Civil Action No. 80-5066-CV-S-4

United States v. Russell Bliss, et al.,
Civil Action Nos. 84-0200-C(1) and
89-351-C(1) thru 89-371-C(1) and 90 _____ C(1)

State of Missouri v. Independent
Petrochemical Corporation, et al.,
Civil Action No. 83-2670-C(2)

State of Missouri v. Russell Bliss, et al.,
Civil Action No. 84-1447-C(4)

State of Missouri v. Syntex (U.S.A.), Inc., et al.,
Civil Action No. 85-2856-C(6)

To Whom it May Concern:

The Continental Insurance Companies ("Continental") issued policies of Comprehensive General Liability Insurance to Northeastern Pharmaceutical and Chemical Company, Inc. ("NEPACCO") as follows: L166-93-07 effective August 5, 1970 to August 5, 1971; L633-49-64, effective August 5, 1971 to August 5, 1972; and L445-47-06, effective August 5, 1972 to November 17, 1972 (collectively the "Policies").

Continental has entered into a settlement agreement with NEPACCO, Edwin Michaels and John Lee (collectively "NEPACCO Defendants") whereby Continental is to pay the NEPACCO Defendants \$235,000.00 (Settlement Payment) in consideration of the NEPACCO Defendants releasing Continental from any obligations to defend or indemnify the NEPACCO Defendants for liability for damages because of property damage or natural resource damage under the Policies.

Continental hereby certifies that the aforementioned Settlement Payment completely exhausts any and all remaining property damage insurance coverage amounts specified in the Policies. Continental further certifies that it has issued no other policies of insurance to NEPACCO, Edwin Michaels or John Lee which may be potentially available to satisfy property damage

claims against NEPACCO, Edwin Michaels or John Lee in connection with the Missouri Dioxin Sites. To the best of Continental's knowledge and belief, no other policies of insurance were issued by other insurance carriers to NEPACCO, Edwin Michaels or John Lee that may be potentially available to satisfy property damage claims against NEPACCO, Edwin Michaels and John Lee in connection with the Missouri Dioxin Sites.

CONTINENTAL INSURANCE COMPANIES

By 

Kevin L. Kelly
AVP Cont. Corp. Clms.

ATTACHMENT C

Officers and Directors of NEPACCO:

Edwin B. Michaels
John W. Lee
Milton Turkel
Bernard Bortz
Daniel Schneider
Harriet Kline
Alfred M. Frankel
Jacques Leviant
- Paul R. Daddona
George McPadden
Charles F. Blum
James Marx
Philip Fisher